

House File 618 - Introduced

HOUSE FILE 618

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 579)

(SUCCESSOR TO HSB 36)

A BILL FOR

1 An Act relating to medical malpractice actions including
2 expert witness testimony, evidence-based medical practice
3 guidelines, and medical malpractice review panels, and
4 providing for fees.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 147.139, Code 2013, is amended to read
2 as follows:

3 **147.139 Expert witness testimony — standards.**

4 1. If the standard of care given by a physician and surgeon
5 or an osteopathic physician and surgeon licensed pursuant
6 to chapter 148, or a dentist licensed pursuant to chapter
7 153, is at issue, the court shall only allow a person to
8 qualify as an expert witness and to testify on the issue of
9 the appropriate standard of care if the person's medical or
10 dental qualifications relate directly to the medical problem
11 or problems at issue and the type of treatment administered
12 in the case., breach of the standard of care, or proximate
13 cause if all of the following qualifications of the person are
14 established:

15 a. The person is licensed to practice medicine, osteopathic
16 medicine, or dentistry and in the five years preceding the
17 allegedly negligent act, was engaged in the active practice
18 of medicine, osteopathic medicine, or dentistry, or was a
19 qualified instructor at an accredited university of medicine
20 and surgery, osteopathic medicine and surgery, or dentistry.

21 b. The person practices or provides university instruction
22 in the same or substantially similar specialty as the
23 defendant.

24 c. If the defendant is board-certified in a specialty,
25 the person is also certified in that specialty by a board
26 recognized by the American board of medical specialties or
27 the American osteopathic association and is licensed and in
28 good standing in each state of licensure, and has not had the
29 person's license revoked or suspended in the past five years.

30 2. A person who is licensed in another state who testifies
31 pursuant to this section as an expert against a defendant,
32 whether in contract or tort arising out of the provision of or
33 failure to provide care, shall be deemed to hold a temporary
34 license to practice in this state for the purpose of providing
35 such testimony and shall be subject to the authority of the

1 applicable licensing board in this state including but not
2 limited to section 147.55.

3 Sec. 2. NEW SECTION. 147.140 **Medical malpractice review**
4 **panels.**

5 1. For the purpose of this section, "*health care provider*"
6 means a physician and surgeon, osteopathic physician and
7 surgeon, dentist, podiatric physician, optometrist, pharmacist,
8 chiropractor, physician assistant, or nurse licensed pursuant
9 to this chapter, a hospital licensed pursuant to chapter 135B,
10 or a health care facility licensed pursuant to chapter 135C.

11 2. *a.* Upon the filing of any action for personal injury
12 or wrongful death against any health care provider based upon
13 the alleged negligence of the licensee in the practice of that
14 profession or occupation, or upon the alleged negligence of
15 the hospital or health care facility in patient care, and upon
16 the filing of an answer thereto by all named defendants, the
17 chief judge of the judicial district within which the action
18 was filed shall convene a medical malpractice review panel to
19 review the validity of the action.

20 *b.* Upon the convening of the medical malpractice review
21 panel, all legal proceedings in the legal action filed with
22 the district court shall be stayed until thirty days after the
23 findings issued by the medical malpractice review panel.

24 3. *a.* The membership of the medical malpractice review
25 panel shall consist of all of the following persons:

26 (1) An attorney licensed to practice law in this state
27 and in good standing who primarily represents plaintiffs in
28 personal injury actions.

29 (2) An attorney licensed to practice law in this state
30 and in good standing who primarily represents defendants in
31 personal injury actions.

32 (3) A health care practitioner licensed in this state and in
33 good standing who practices in the specialty or profession of
34 the person accused of negligence.

35 (4) If one of the defendants is a hospital or health care

1 facility, a person familiar with hospital or health care
2 administration.

3 (5) A lay person with no connection to any health care
4 provider or insurance company.

5 (6) A nonvoting chairperson who is an attorney licensed
6 to practice law in this state and in good standing, appointed
7 by the chief judge of the judicial district within which the
8 action was filed from a list of attorneys maintained by the
9 district court or the chief judge of the judicial district for
10 such selection purpose.

11 b. Within ten days of receipt of the notification of
12 appointment as chairperson of the medical malpractice review
13 panel, the chairperson shall appoint the members of the review
14 panel for the particular medical malpractice claim to be heard.

15 (1) The department of public health and the board of
16 nursing, board of medicine, dental board, and board of pharmacy
17 shall maintain and make available to the chairperson of the
18 review panel a current list of health care providers who are
19 licensed in this state and in good standing to serve on the
20 review panel. A health care provider's license shall be
21 revoked if the health care provider does not serve as a review
22 panel member when so appointed, unless excused for good cause
23 shown.

24 (2) The supreme court shall maintain a current list of
25 attorneys who are licensed in this state and in good standing
26 to serve on the review panel. An attorney's license shall be
27 revoked if the attorney does not serve as a review panel member
28 when so appointed, unless excused for good cause shown.

29 4. a. Within thirty days of convening the medical
30 malpractice review panel, a party to the proceedings shall
31 produce to all other parties all medical and health care
32 provider records within the possession or control of the party
33 pertaining to the plaintiff regardless of whether the party
34 believes such records are relevant to the proceedings.

35 b. The chairperson may permit reasonable discovery, and

1 if so allowed, shall determine a timetable for any additional
2 discovery prior to the hearing before the review panel.

3 Depositions of persons other than the parties and experts
4 designated by the parties shall not be taken except for good
5 cause shown by the party requesting the deposition.

6 *c.* The chairperson shall have the power to issue subpoenas
7 for both discovery and compulsion of testimony in the same
8 manner and method as the district court.

9 *d.* The chairperson shall also determine a date on or
10 before which the plaintiff must submit a certificate-of-merit
11 affidavit as provided in subsection 5 for each expert the
12 plaintiff intends to call as a witness to testify with respect
13 to the issues of breach of the applicable standard of care or
14 causation.

15 5. *a.* A plaintiff shall submit a separate
16 certificate-of-merit affidavit for each defendant named
17 in the action. The affidavit submitted for the defendant
18 must be signed by the expert. The affidavit must certify the
19 purpose for calling the expert by providing under the oath of
20 the expert all of the following:

21 (1) The expert's statement of familiarity with the
22 applicable standard of care.

23 (2) The expert's statement that the standard of care was
24 breached by the health care provider named as the defendant.

25 (3) The expert's statement of the actions that the health
26 care provider failed to take or should have taken to comply
27 with the standard of care.

28 (4) The expert's statement of the manner by which the breach
29 of the standard of care was the cause of the injury alleged in
30 the petition.

31 *b.* If a plaintiff fails to submit a certificate-of-merit
32 affidavit within the time determined by the chairperson, the
33 chairperson shall file a motion with the district court to
34 dismiss the plaintiff's action with regard to the defendant for
35 which the certificate-of-merit affidavit was not submitted.

1 The district court shall then dismiss with prejudice the
2 plaintiff's action against the defendant.

3 6. a. The chairperson of the medical malpractice review
4 panel shall hold a hearing of the full review panel to review
5 the plaintiff's claim and defendant's defenses within six
6 months from the date all members of the review panel were
7 appointed, unless the time period has been extended by the
8 chairperson for good cause shown by a requesting party. In no
9 event shall any extension cause the hearing to occur more than
10 one year after all review panel members were appointed.

11 b. Except as otherwise provided in this subsection, one
12 combined hearing or hearings shall be held for all claims
13 under this section arising out of the same action. If the
14 action includes more than one defendant, the parties may,
15 upon agreement of all parties, require that separate hearings
16 be held for each defendant or group of defendants. The
17 chairperson may, for good cause shown, order separate hearings.

18 7. At the hearing before the medical malpractice review
19 panel, all parties who are natural persons shall be personally
20 present and all entity parties shall have a representative
21 present with responsibility for the subject matter that is the
22 subject of the action. If a plaintiff fails to appear at the
23 hearing, the chairperson shall file a motion with the district
24 court to dismiss the plaintiff's action with prejudice, and
25 the court shall grant the motion. If the defendant fails to
26 appear at the hearing, the defendant shall be precluded from
27 presenting any evidence or making any presentation before the
28 review panel or at any subsequent trial.

29 8. At the hearing before the medical malpractice review
30 panel, the plaintiff shall present the plaintiff's case to
31 the review panel and each defendant shall present evidence
32 in response to the plaintiff's presentation. Wide latitude
33 shall be afforded the parties in the conduct of the hearing
34 including but not limited to the right of examination and
35 cross-examination of witnesses by attorneys for the parties.

1 Depositions shall be admissible regardless of whether the
2 person deposed is available at the hearing. The Iowa rules of
3 civil procedure shall not apply at the hearing, and evidence
4 may be admitted if such evidence is evidence upon which
5 reasonable persons are accustomed to rely. The chairperson
6 shall make all procedural rulings and such rulings shall be
7 binding and final. The hearing shall be recorded either
8 electronically or with the assistance of a court reporter. The
9 cost of recording the hearing shall be equally divided among
10 the parties. The record of the proceedings and all documents
11 presented as exhibits shall be confidential except in the
12 following circumstances:

13 *a.* Any testimony or writings made under oath may be used in
14 subsequent proceedings for purposes of impeachment.

15 *b.* The party who made a statement or presented evidence
16 agrees to the submission, use, or disclosure of the statement
17 or evidence.

18 *c.* The parties unanimously agree upon disclosure of any part
19 of the record or proceedings.

20 9. Upon the conclusion of the hearing, the medical
21 malpractice review panel may request from any party additional
22 facts, records, or other information to be submitted in writing
23 or at a continuation of the hearing. A continued hearing
24 shall be held as soon as possible. A continued hearing shall
25 be attended by the same review panel members and parties who
26 attended the initial hearing, unless otherwise agreed to by all
27 parties.

28 10. The medical malpractice review panel shall issue its
29 findings in writing within thirty days of submission of all
30 presentations and evidence.

31 *a.* The review panel's findings shall contain answers to all
32 of the following questions:

33 (1) Whether the acts or omissions complained of constitute
34 a deviation from the applicable standard of care by the health
35 care provider charged with such care.

1 (2) Whether the acts or omissions complained of proximately
2 caused the injury complained of.

3 (3) If negligence on the part of a health care provider
4 is found, whether any negligence on the part of the plaintiff
5 was equal to or greater than the negligence of the health care
6 provider.

7 *b.* The review panel shall make any affirmative finding by a
8 preponderance of the evidence.

9 *c.* With regard to each question, the review panel's findings
10 with regard to each question shall be determined by a majority
11 of the panel members. The determination of the answer to
12 any question by any individual review panel member shall be
13 confidential and shall not be disclosed to any party or other
14 member of the public. The findings shall reflect the number
15 of review panel members making a determination of an answer
16 in the affirmative and in making a determination of an answer
17 in the negative. The findings, including the cumulative
18 determinations in the affirmative and the negative for each
19 answer, shall be signed by all review panel members, with
20 each review panel member attesting that the written findings
21 accurately reflect the determinations made.

22 *d.* The chairperson of the review panel shall serve the
23 findings upon the parties within seven days of the date of
24 the findings. The review panel's written findings shall be
25 preserved until thirty days after final judgment or the action
26 is finally resolved after which time such findings shall be
27 destroyed. All medical and health care provider records shall
28 be returned to the party providing them to the review panel.

29 *e.* The deliberations and discussion of the review panel
30 shall be privileged and confidential and a review panel
31 member shall not be asked or compelled to testify at a later
32 proceeding concerning the deliberations, discussions, or
33 findings expressed during the review panel's deliberations,
34 except as such deliberation, discussion, or findings may be
35 required to prove an allegation of intentional fraud. All

1 review panel members and the chairperson shall be immune from
2 liability as a result of participation in or serving as a
3 review panel member, except for instances of intentional fraud.

4 11. The effect of the medical malpractice review panel's
5 findings shall be as follows:

6 a. The review panel's findings are admissible as evidence in
7 any subsequent action between the parties.

8 b. If the review panel's findings are unanimous and
9 unfavorable to the plaintiff in such a manner as would not
10 permit recovery by the plaintiff if the answers were made at
11 trial, all of the following shall apply:

12 (1) If the action proceeds and results in a verdict and
13 judgment for the defendant, the plaintiff shall be required to
14 pay all expert witness fees and court costs incurred by the
15 defendant.

16 (2) If the action proceeds and results in a verdict and
17 judgment for the plaintiff, any noneconomic damages awarded
18 to the plaintiff shall not exceed two hundred fifty thousand
19 dollars.

20 c. If the review panel's findings are unanimous and
21 unfavorable to the defendant, allowing the plaintiff to recover
22 based upon the defendant's answers, all of the following shall
23 apply:

24 (1) The defendant shall promptly admit liability or enter
25 into negotiations to pay the plaintiff's claim for damages.

26 (2) If liability is admitted, the claim may be resubmitted
27 to the review panel upon agreement of the plaintiff and the
28 defendant for a determination of damages. Any determination
29 of damages by the review panel shall be admissible in any
30 subsequent action.

31 (3) If liability is not admitted and the parties are not
32 able to resolve the claim through settlement negotiations
33 within thirty days after service of the review panel's
34 findings, the plaintiff may proceed with the action. If
35 the plaintiff obtains a verdict or judgment in excess of

1 the plaintiff's last formal demand after the settlement
2 negotiations following the review panel's findings, the
3 defendant shall be required to pay all expert witness fees and
4 court costs incurred by the plaintiff.

5 12. a. Upon the appointment of all members of the review
6 panel, each party shall pay to the clerk of the district court
7 a filing fee of two hundred fifty dollars.

8 b. Any party may apply to the chairperson of the review
9 panel for a waiver of the filing fee. The chairperson shall
10 grant the waiver if the party is indigent.

11 c. Any party who is or was an employee of another party at
12 the time of the claimed injury and was acting in the course and
13 scope of employment with such other party shall not be required
14 to pay a filing fee.

15 d. The review panel member who is a lay member shall be
16 paid fifty dollars per day for each day spent participating in
17 a hearing and for time spent deliberating a case. The other
18 members of the review panel shall not receive compensation for
19 their efforts, as service on a review panel shall be deemed a
20 part of the privilege of professional licensure.

21 e. All review panel members shall be reimbursed for
22 reasonable travel expenses incurred to participate in a hearing
23 and deliberation of a case and such travel costs shall be
24 divided equally among and paid by the parties.

25 Sec. 3. NEW SECTION. 622.31A Evidence-based medical
26 practice guidelines — affirmative defense.

27 1. For purposes of this section:

28 a. "*Evidence-based medical practice guidelines*" means
29 voluntary medical practice parameters or protocols established
30 and released through a recognized physician consensus-building
31 organization approved by the United States department of health
32 and human services, through the American medical association's
33 physician consortium for performance improvement or similar
34 activity, or through a recognized national medical specialty
35 society.

1 for fees.

2 EXPERT WITNESS TESTIMONY STANDARDS. Under current law,
3 if the standard of care given by a physician and surgeon, an
4 osteopathic physician and surgeon, or a dentist is at issue,
5 the court shall only allow a person to qualify as an expert
6 witness and to testify on the issue of the appropriate standard
7 of care if the person's medical or dental qualifications relate
8 directly to the medical problem or problems at issue and the
9 type of treatment administered in the case. The bill amends
10 this law to provide that an expert witness must meet certain
11 professional practice and educational practice qualifications
12 before testifying on the issue of the appropriate standard of
13 care, breach of the standard of care, or proximate cause in
14 such a case. In addition, a person who is licensed in another
15 state who testifies as an expert against a defendant shall be
16 deemed to hold a temporary license to practice in this state
17 for the purpose of providing such testimony and is subject to
18 the authority of the applicable licensing board in this state.

19 MEDICAL MALPRACTICE REVIEW PANELS. The bill provides
20 that in any personal injury or wrongful death action against
21 any health care provider, hospital, or health care facility
22 based upon negligence, and upon the filing of an answer by
23 all defendants, the chief judge of the judicial district
24 within which the action was filed is required to convene a
25 medical malpractice review panel to review the validity of the
26 action. Once convened, all legal proceedings in the action
27 are stayed until 30 days after the medical review panel issues
28 its findings in the case. "Health care provider" is defined
29 as a licensed physician and surgeon, osteopathic physician and
30 surgeon, dentist, podiatric physician, optometrist, pharmacist,
31 chiropractor, physician assistant, or nurse, licensed hospital,
32 or licensed health care facility.

33 The bill provides for the appointment of the members of the
34 medical review panel, including professional qualifications of
35 the members, if applicable, and specific procedures for the

1 selection of the review panel members.

2 The bill provides that upon the appointment of all members
3 of the review panel, each party is required to pay a filing fee
4 of \$250 which may be waived in some circumstances. A review
5 panel member who is a lay member shall be paid \$50 per day
6 for each day spent participating in a hearing and for time
7 spent deliberating a case. The other members of the review
8 panel shall not receive compensation, however all review panel
9 members shall be reimbursed for reasonable travel expenses.

10 The bill provides that within 30 days of convening the
11 medical malpractice review panel, a party to the proceedings is
12 required to produce to all other parties all medical and health
13 care provider records within the possession or control of the
14 party pertaining to the plaintiff regardless of whether the
15 party believes such records are relevant to the proceedings.
16 The chairperson of the review panel may permit reasonable
17 discovery, but depositions of persons other than the parties
18 and experts designated by the parties shall not be taken except
19 for good cause shown by the party requesting the deposition.
20 The chairperson shall also have the power to issue subpoenas.

21 The plaintiff is required to submit a separate
22 certificate-of-merit affidavit for each defendant named in the
23 action, signed by the expert, which must certify the purpose
24 for calling the expert by providing under the oath of the
25 expert certain specific criteria. If a plaintiff fails to
26 submit a certificate-of-merit affidavit within the time period
27 determined by the chairperson, upon the chairperson's motion,
28 the court is required to dismiss with prejudice the plaintiff's
29 action against the defendant.

30 The chairperson of the medical malpractice review panel
31 is required to hold a hearing of the full review panel to
32 review the plaintiff's claim and defendant's defenses within
33 six months from the date all members of the review panel
34 were appointed, unless extended by the chairperson for good
35 cause shown, not to exceed one year after all review panel

1 members were appointed. If the action includes more than one
2 defendant, the parties may, upon agreement of all parties,
3 require that separate hearings be held for each defendant or
4 group of defendants.

5 The bill provides specific provisions relating to the
6 conduct of the hearing of the medical malpractice review
7 panel including provisions relating to personal appearance by
8 the parties and the presentation and admission of evidence.
9 The hearing and exhibits are confidential except in certain
10 circumstances. Upon the conclusion of the hearing, the review
11 panel may request from any party additional facts, records,
12 or other information to be submitted in writing or at a
13 continuation of the hearing.

14 The review panel is required to issue its findings in writing
15 within 30 days of submission of all presentations and evidence
16 and served upon the parties within seven days of the date of
17 the findings. Such findings shall be determined by a majority
18 of the review panel members, shall be determined based upon a
19 preponderance of the evidence standard, shall contain certain
20 answers relating to the acts or omissions of the health care
21 provider, and shall be signed by all review panel members. The
22 determination of the answer to any question by any individual
23 review panel member shall be confidential and shall not be
24 disclosed to any party or other member of the public. The
25 review panel's findings shall be preserved until 30 days after
26 final judgment or the action is finally resolved after which
27 time such findings shall be destroyed. All medical and health
28 care provider records shall be returned to the party providing
29 them to the review panel. The deliberations and discussion of
30 the review panel shall be privileged and confidential. All
31 review panel members and the chairperson shall be immune from
32 liability as a result of participation in or serving as a
33 review panel member, except for instances of intentional fraud.

34 The medical malpractice review panel's findings are
35 admissible as evidence in any subsequent action between the

1 parties. The bill specifies conditions under which each party
2 may be responsible for witness fees and court costs. If the
3 civil action proceeds to trial and results in a verdict and
4 judgment for the plaintiff, any noneconomic damages are capped
5 at \$250,000.

6 The bill provides that if the review panel's findings
7 are unanimous and unfavorable to the defendant, allowing the
8 plaintiff to recover based upon the defendant's answers, the
9 defendant is required to promptly admit liability or enter
10 into negotiations to pay the plaintiff's claim for damages.
11 If liability is admitted, the claim may be resubmitted
12 to the review panel for a determination of damages and
13 any determination of damages by the review panel shall be
14 admissible in any subsequent action. If liability is not
15 admitted and the parties cannot resolve the claim through
16 settlement negotiations within 30 days after service of the
17 review panel's findings, the plaintiff is allowed to proceed
18 with the action.

19 EVIDENCE-BASED MEDICAL PRACTICE GUIDELINES. The bill
20 provides that a judge may admit evidence-based medical practice
21 guidelines into evidence if introduced only by a health
22 care provider or by the health care provider's employer and
23 if the health care provider or the health care provider's
24 employer establishes foundational evidence in support of the
25 evidence-based medical practice guidelines as well as evidence
26 that the health care provider complied with the guidelines.
27 Evidence of departure from an evidence-based medical practice
28 guideline is admissible only on the issue of whether the
29 health care provider is entitled to assert an affirmative
30 defense. Evidence-based medical practice guidelines shall
31 not be admitted into evidence where the health care provider
32 mistakenly determined that the evidence-based medical practice
33 guideline applied to a particular patient where such mistake
34 was caused by the health care provider's negligence or
35 intentional misconduct or the health care provider failed to

1 properly follow the evidence-based medical practice guideline
2 where such failure was caused by the health care provider's
3 negligence or intentional misconduct.

4 "Evidence-based medical practice guidelines" means voluntary
5 medical practice parameters or protocols established and
6 released through a recognized physician consensus-building
7 organization approved by the United States department of health
8 and human services, through the American medical association's
9 physician consortium for performance improvement or similar
10 activity, or through a recognized national medical specialty
11 society. "Health care provider" means a physician and surgeon,
12 osteopathic physician and surgeon, physician assistant, or
13 advanced registered nurse practitioner.